

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

BEVERLY JEAN DOLLEN,

Plaintiff,

v.

Civil Action No. 2:24-cv-00515

CAREY BLACKHURST, CPS Agent;
WENDY JONES, CPS Agent;
LORA DYER, Judge,
RYAN RUTH, Guardian Ad Litem;
and ROCKY HOLMES, Assistant
Prosecuting Attorney,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending is plaintiff Beverly Jean Dollen's Application to Proceed Without Prepayment of Fees and Costs which she brings under 42 U.S.C. § 1983, seeking to overturn a state court adjudication directing removal of her children from her custody and termination of her parental rights, together with claims relating thereto (see Compl., ECF 1), filed September 19, 2024. This proceeding was previously referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of proposed findings and recommendations ("PF&R"). Judge Tinsley filed a PF&R (ECF 6) on October 9, 2024, finding lack of subject matter jurisdiction, and recommending that this action be dismissed, to which no objections were filed.

Judge Tinsley entered an order to show cause on September 24, 2024, instructing plaintiff to either pay the applicable filing fee for this matter or to file a completed application to proceed without prepayment of fees and costs. See Order to Show Cause, ECF 3. The order also instructed plaintiff to file a civil cover sheet related to her complaint. See id. Thereafter, on October 7, 2024, the plaintiff filed a civil cover sheet, see Civil Cover Sheet, ECF 4, and an Application to Proceed Without Prepayment of Fees and Costs, see Application to Proceed without Prepayment of Fees and Costs, ECF 5.

Plaintiff filed the complaint in this action seeking the court's review of a judgment from the Circuit Court of Jackson County, West Virginia, which resulted in removal of plaintiff's three children from her custody and termination of her parental rights. PF&R at 1-3. Plaintiff proceeds on the theory that the named defendants' conduct related to the state court custody proceedings violated the plaintiff's constitutional rights. PF&R at 2. Specifically, plaintiff asks the court to 1) find that the judgment was entered in violation of plaintiff's due process rights and is thus void and invalid, and 2) to reverse the judgment and require that plaintiff's

children be returned to her custody and her parental rights be restored. PF&R at 3.

Judge Tinsley sua sponte determined that the court lacks jurisdiction over a final judgment of a West Virginia Circuit Court. PF&R at 4-5. To reach this determination, Judge Tinsley analyzed plaintiff's claims under the "Rooker-Feldman doctrine" and determined that plaintiff's claims satisfied each of the four Rooker-Feldman factors, and as a result, the court lacks appellate jurisdiction to hear plaintiff's claims. See id. (citing Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983)). Thus, Judge Tinsley recommends that the complaint be dismissed without prejudice. PF&R at 6.

The court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings and recommendations to which no objection has been addressed. See Thomas v. Arn, 474 U.S. 140 (1985); see also 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.") (emphasis added). Failure to timely file objections constitutes a waiver of de novo review and the plaintiff's right

to appeal the order of the court. See 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989).

Objections in this case having been due October 28, 2024, and none having been filed, this matter may be duly adjudicated.

Accordingly, it is ORDERED that:

1. The findings and recommendations made in the magistrate judge's Proposed Findings and Recommendations be, and hereby are, ADOPTED by the court and incorporated herein;
2. The court is without subject matter jurisdiction in this case;
3. The plaintiff's Application to Proceed Without Prepayment of Fees or Costs be, and it hereby is, DENIED; and
4. This action be, and it hereby is, DISMISSED without prejudice from the docket of this court.

The Clerk is directed to transmit copies of this order to all counsel of record, any unrepresented parties, and the United States Magistrate Judge.

ENTER: November 8, 2024


John T. Copenhaver, Jr.
Senior United States District Judge